

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
ILLINOIS DEPARTMENT OF TRANSPORTATION,
MACON COUNTY,
AND ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE
MACON COUNTY BELTWAY, MACON COUNTY, ILLINOIS**

WHEREAS, Macon County in coordination with the Illinois Department of Transportation (IDOT) plans to construct a new bypass around the southeast side of Decatur, Macon County, Illinois (Project), IDOT Sequence #13921, 13921A, 13921B; and

WHEREAS, the Federal Highway Administration (FHWA) may fund the Project thereby making the Project an undertaking subject to review under Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. Section 470f, and its implementing regulations, 36 C.F.R. Part 800; and

WHEREAS, the FHWA has defined the undertaking's area of potential effect (APE) as the proposed project area (as shown in Exhibit A); and

WHEREAS, FHWA in consultation with the Illinois State Historic Preservation Officer (SHPO) has determined that no standing structures that are listed or eligible for listing on the National Register of Historic Places (NRHP) will be adversely affected by the Project (Exhibit B); and

WHEREAS, FHWA invited the following Tribes/Bands to enter consultation September 25, 2015: Kickapoo Traditional Tribe of Texas, Kickapoo Tribe of Kansas, Kickapoo of Oklahoma, Miami Tribe of Oklahoma, and Peoria Tribe of Indians in Oklahoma, and no Tribe expressed an interest in the Project; and

WHEREAS, FHWA has invited the IDOT to participate in consultation and to become a signatory to this MOA; and

WHEREAS, FHWA has invited Macon County to participate in consultation and to become a signatory to this MOA; and

WHEREAS, FHWA and IDOT, in consultation with SHPO, have identified nine archaeological sites that represent prehistoric (Native American) and Euro-American habitation sites (Sites), 11M180, 245, 266, 272, 273, 282, 283, 328, and 334, that will likely be adversely affected by the Project and have been determined eligible for the National Register of Historic Places (NRHP) under Criterion D (Exhibit B); and

WHEREAS, the Sites have no affiliation with historic Indian Tribes and are important for the scientific data they likely contain and do not require preservation in place; and

WHEREAS, in accordance with 36 CFR Part 800.4(b)(2), FHWA and IDOT in coordination with the SHPO will implement a staged approach to the identification and NRHP evaluation of archaeological resources because not all high-priority parcels within the APE could be surveyed because of landowner refusal; and

WHEREAS, in accordance with 36 CFR Part 800, the FHWA acknowledges and accepts the advice and conditions outlined in the Council's "Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites," published in the Federal Register on June 17, 1999; and

WHEREAS, FHWA notified the Advisory Council on Historic Preservation (ACHP) of the preparation of this Memorandum of Agreement (MOA) in a letter dated April 29, 2016, and FHWA received no response from the ACHP; and

WHEREAS, execution and implementation of this MOA evidences that FHWA has satisfied its Section 106 responsibilities for the Project; and

NOW, THEREFORE, FHWA, IDOT, Macon County, and SHPO agree that the Project shall be implemented in accordance with the following stipulations to ensure that potential effects on historic properties are taken into account.

STIPULATIONS

FHWA, IDOT, Macon County, and SHPO agree that the following steps will be undertaken for the Project:

I. ARCHAEOLOGICAL INVESTGATIONS

- A. Identification and Evaluation of Resources.** Additional archaeological surveys and test excavations will be conducted by IDOT in a staged fashion when access to sites and previously unexamined high-priority parcels is secured by Macon County. In coordination with the SHPO, IDOT and FHWA will make a good-faith effort to identify archaeological resources and to evaluate their NRHP eligibility.
- B. Mitigation of Adverse Effects.** For those sites determined eligible for the NRHP, Macon County, IDOT, and FHWA in coordination with the SHPO will attempt to avoid and minimize potential impacts. When impacts cannot be avoided, data-recovery excavations will be conducted by IDOT. These investigations will follow the generalized data-recovery plans (DRP) for prehistoric and historic era habitation sites listed in Exhibit C.
- C. Human Remains.** If human remains are discovered during the investigations covered by this agreement, the provisions of the Illinois Human Skeletal Remains Protection Act (20 ILCS 3440, 17 IAC 4170)

and its rules (the Act), will be followed. No excavation of human remains will be performed except under the direction of a Certified Skeletal Analyst (17 IAC 4170.300(f)). Disposition of the remains and associated artifacts will be accomplished as determined under the Act. If the remains are determined to be Native American, the provisions of the Memorandum of Understanding regarding Tribal Consultation Requirements for the Illinois Federal Transportation Program, effective September 19, 2011, will be followed, and Tribes with an interest in Macon County will be notified.

II. PROFESSIONAL STANDARDS

For the purpose of implementing this agreement, IDOT shall continue to employ departmental staff with qualifications that meet the requirements of 36 CFR Part 61, Appendix A. At a minimum, the professional staff required to carry out the terms of this agreement shall consist of one permanent, full time, archaeologist. In the event of a prolonged absence of the IDOT archaeologist, IDOT will, in consultation with FHWA, appoint an archaeologist that meets the requirements of 36 CFR Part 61, Appendix A.

III. DURATION

This agreement will be null and void if its stipulations are not carried out within twenty (20) years from the date of its execution. In such an event, the FHWA shall so notify the parties to this agreement and, if it chooses to continue with the Project, then it shall reinitiate review of the Project in accordance with 36 CFR Part 800.

IV. POST REVIEW DISCOVERIES

- A. Procedures for an Unanticipated Discovery of Human Remains and Burials.** In the case of an unanticipated discovery of human remains or burials on Federal land, IDOT will follow the procedures outlined by the Native American Graves Protection and Repatriation Act, as amended (43 CFR 10, Subpart B), and pursuant to the Archaeological Resources Protection Act of 1979 (43 CFR 7). In the event of an unanticipated discovery of human remains or burials on non-Federal lands during IDOT construction activities, IDOT will comply with 20 Illinois Compiled Statutes 3440/0.01, et seq. (Human Skeletal Remains Protection Act) and follow these procedures:

- (a) Upon encountering human remains or an unmarked human burial during ground disturbing construction activities, IDOT will ensure that the construction contractor immediately stops work within a one hundred fifty (150) foot radius from the point of discovery. The IDOT will ensure that the construction contractor implements interim measures to protect the

discovery from vandalism and looting, but must not remove or otherwise disturb any human remains or other items in the immediate vicinity of the discovery.

(b) Immediately following receipt of such notification, the IDOT will ensure that construction activities have halted within a one hundred fifty (150) foot radius from the point of discovery and assume responsibility for implementing additional measures, as appropriate, to protect the discovery from looting and vandalism until the requirements of state law have been completed.

(c) IDOT will determine if the skeletal remains are human, the degree to which they were disturbed, and, if possible, assess their potential age and cultural affiliation without any further disturbance.

(d) IDOT will notify the county coroner, Illinois Historic Preservation Agency (IHPA) and SHPO within forty-eight (48) hours of the discovery.

(e) Within seventy-two (72) hours after notification the county coroner will determine jurisdiction. If the remains are older than one hundred (100) years, the county coroner will notify the IHPA and SHPO.

(f) The IHPA is responsible for notifying FHWA and IDOT within twenty-four (24) hours of its findings.

(g) If it is determined that intact or fragmented human remains are present IDOT will consult with the IHPA, SHPO, FHWA, and other interested parties regarding additional measures to avoid and protect or mitigate the adverse effect of the Project on the human remains and burial site. These measures may include:

- i. formal archaeological evaluation of the site;
- ii. if the remains are determined to be Native American, consultation with appropriate Tribes will be required;
- iii. visits to the site by the SHPO and other interested parties;
- iv. exploration of potential alternatives to avoid the human remains or burial;
- v. for Native American remains, implementation of a mitigation plan by IDOT in consultation with appropriate Tribes, including procedures for disinterment and re-interment;
- vi. implementation of the mitigation plan; and
- vii. FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.

B. Procedures for an Unanticipated Discovery of Historic Properties. In the event of an unanticipated discovery of historic properties during IDOT construction activities, IDOT will follow these procedures:

(a) The construction contractor must immediately stop all construction activity within a one hundred fifty (150) foot radius of the discovery, notify IDOT of the discovery and implement interim measures to protect the discovery from looting and vandalism. Within forty-eight (48) hours of receipt of this notification of the discovery, the IDOT shall:

- i. inspect the work site to determine the extent of the discovery and ensure that construction activities have halted;
- ii. clearly mark the area of the discovery;
- iii. implement additional measures, as appropriate, to protect the discovery from looting and vandalism; and
- iv. notify the FHWA, the SHPO, and other interested parties of the discovery.

(b) IDOT/FHWA will have seven (7) business days following notification to determine the National Register eligibility of the discovery after considering the filed comments of the SHPO and other interested parties. IDOT/FHWA may assume the newly discovered property to be eligible for the National Register for the purposes of Section 106 pursuant to 36 CFR§ 800.13(c)

(c) If the find is determined to be potentially significant the IDOT will consult with the SHPO and other interested parties regarding appropriate measures for site treatment. For properties determined eligible for the National Register, IDOT/FHWA will notify the SHPO and other interested parties, of those actions for which it proposes to resolve adverse effects. The SHPO and other interested parties will have seven (7) business days to provide their views on the proposed actions to resolve adverse effects. These measures may include:

- i. formal archaeological evaluation of the site;
- ii. visits to the site by the SHPO and other interested parties;
- iii. exploration of potential alternatives to avoid the site;
- iv. preparation of a mitigation plan by IDOT in consultation with other interested parties for approval by the SHPO;
- v. implementation of a mitigation plan; and
- vi. FHWA approval to resume construction following completion of the fieldwork component of the mitigation plan.

(d) If the find is determined to be either isolated or completely disturbed by construction activities, the IDOT will consult with the SHPO and other interested parties prior to resuming construction.

(e) Dispute Resolution: The FHWA will seek and take into account the recommendations of the ACHP in resolving any disagreements that may arise regarding determination of effects.

V. DISPUTE RESOLUTION

Should any signatory to this agreement object at any time to any actions proposed or the manner in which the terms of this agreement are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:

- A. Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objections within thirty days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories and provide them with a copy of this written response. FHWA will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty day time period FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the agreement and provide them and the ACHP with a copy of such written response.
- C. FHWA's responsibility to carry out all other actions subject to the terms of this agreement that are not the subject of the dispute remain unchanged.

VI. AMENDMENTS

This agreement may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VII. TERMINATION

If any signatory to this agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment. If within thirty days an amendment cannot be reached, any signatory may terminate the agreement upon written notification to the other signatories. Once the

agreement is terminated and prior to work continuing on the undertaking, FHWA must request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FHWA shall notify the signatories as to the course of action it will pursue.

Execution of this agreement by the FHWA, SHPO, IDOT, and Macon County and implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES

FEDERAL HIGHWAY ADMINISTRATION

By:  Date: 7/7/2016

ILLINOIS STATE HISTORIC PRESERVATION OFFICER

By:  Date: 7/6/16

INVITED SIGNATORIES

ILLINOIS DEPARTMENT OF TRANSPORTATION

By:  Date: 6/15/16

MACON COUNTY

By:  Date: June 9, 2016